

**WAUKESHA COUNTY BOARD OF ADJUSTMENT
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, January 11, 2006, at 6:30 p.m. in Room 255/259 of the Waukesha County Administration Center, 1320 Pewaukee Road, Waukesha County Wisconsin, 53188.

BOARD MEMBERS PRESENT: James Ward, Chairman
Paul Schultz
Walter Tarmann
Darryl Judson

BOARD MEMBERS ABSENT: Robert Bartholomew
Walter Schmidt

SECRETARY TO THE BOARD: Peggy Pelikan

OTHERS PRESENT: Ralph P. Hibbard, BA05:084, petitioner
Ken Byom, BA05:093, petitioner
Jennifer Byom, BA05:093, petitioner
Timmie Coppinger, BA05:090, BA05:091, BA05:092,
BA05:093, neighbor
Brain Turk, BA05:084, Town of Vernon Planner
Patricia Oitzinger, BA05:098, neighbor
Richard V. Koracin, BA05:084, neighbor
Glenn Fieber, BA05:084, Town of Vernon Supervisor
Linda McAlpine, Waukesha Freeman
Scott Williams, Milwaukee Journal Sentinel
David Hazenfield, BA05:090, petitioner
Mark Marzion, BA05:098, petitioner

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use, and a taped copy or transcript is available, at cost, upon request.

SUMMARIES OF PREVIOUS MEETINGS:

Mr. Tarmann *I make a motion to approve the Summary of the Meeting of December 14, 2005.*

The motion was seconded by Mr. Schultz and carried with three yes votes. Mr. Judson abstained because he was not in attendance at the December 14, 2005, meeting.

NEW BUSINESS:

BA05:084 RALPH P. HIBBARD
Heaven City Development Co. - Owner

Mr. Tarmann *I make a motion to deny the petitioner's request to appeal the Planning and Zoning Division Staff's determination that the proposed structure is a sign based on the definition of a sign as stated in the County Zoning Ordinance.*

The motion was seconded by Mr. Ward and carried unanimously.

Mr. Ward

I make a motion to approve the request for variances for the reasons and with the conditions set forth in the Staff Report and Recommendation with the following additional conditions:

- 4. The height of the sign shall be no greater than 33 ft. as represented by the petitioner.*
- 5. If the amended Conditional Use and the Town and County Plan Commissions do not address it, then the sign cannot be lit after 10:00 p.m.*

The motion was seconded by Mr. Judson and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. The sign shall be faced south (towards National Ave.) to minimize the impact of the illuminated sign on the neighboring properties to the east.
2. A Site Plan/Plan of Operation must be reviewed and approved by both the Town of Vernon Plan Commission and the Waukesha County Department of Parks and Land Use and the necessary permits must be issued before the installation of the sign. Furthermore, a Conditional Use permit, if applicable, must be applied for and approved by the Town and County prior to the issuance of a Zoning Permit for the sign.
3. If the sign becomes a nuisance to the neighboring properties, the matter should be referred back to the Town Plan Commission, the Waukesha County Park and Planning Commission, and the Department of Parks and Land Use and for review. The Town and County may consider requiring that additional screening measures be implemented, limiting the hours that the sign may be illuminated, requiring reduced wattage on the sign, the installation of a manufactured shield/shade, and/or non-illumination of the north side of the sign.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request will allow the petitioner to install a sign on the subject property. The sign has historic value and will be an asset to the Town of Vernon. Furthermore, if faced south as conditioned, the sign should have a minimal impact on the adjacent properties to the east. Due to the height of the proposed sign it should be screened from the properties to the east by the existing tree line. In addition, although the sign will most likely be visible from National Ave., it will be setback approximately 400 ft. from the centerline of the road and 450 ft. from the nearest property line, and its impact should be minimal. The approval of this request would be in conformance with the purpose and intent of the Ordinance.

BA05:090 DAVID & CODY HAZENFIELD

Mr. Ward

I make a motion to approve the request for variances to allow the deck to remain on the property for the following reasons:

There are unique characteristics to the property. The residence is located very close to the road and the lake, and in close proximity to commercial uses as well as the

public boat launch. The property does not have a garage and old pictures of the properties in this area show that the properties along this road usually had sidewalks, concrete patios, or block patios. If the deck is removed the Board feels that the property will not look as nice and that people will be more inclined to store belongings against the house. The decks also provide a second access to the house. Furthermore, the approval of this request would be consistent with a decision rendered in September of 2005, on a neighboring property, which was not appealed by the Wisconsin Department of Natural Resources. Therefore, due to the uniqueness of the property, the petitioners have demonstrated a hardship if they were to be forced to remove the deck. Therefore, the approval of this request is in conformance with the purpose and intent of the Ordinance.

The motion was seconded by Mr. Judson and carried unanimously.

The staff's recommendation was for denial.

BA05:091 JOSEPH GREEN

Mr. Schultz

I make a motion to approve the request for variances to allow the deck to remain on the property. The hot tub was not in the original public notice; therefore, if necessary, the petitioner may need to come back to the Board of Adjustment to request variances for the hot tub. If this is necessary, the Planning and Zoning Division Staff might be able to waive the fee. The reasons for the decision are as follows:

There are unique characteristics to the property. The residence is located very close to the road and the lake, and in close proximity to commercial uses as well as the Town of Oconomowoc boathouse and launch used in conjunction with the lake patrol. The property does not have a garage and old pictures of the properties in this area show that the properties along this road usually had sidewalks, concrete patios, or block patios. If the deck is removed the Board feels that the property will not look as nice and that people will be more inclined to store belongings against the house. The decks also provide a second access to the house. Furthermore, the approval of this request would be consistent with a decision rendered in September of 2005, on a neighboring property, which was not appealed by the Wisconsin Department of Natural Resources. Therefore, due to the uniqueness of the property, the petitioners have demonstrated a hardship if they were to be forced to remove the deck. Therefore, the approval of this request is in conformance with the purpose and intent of the Ordinance.

The motion was seconded by Mr. Tarmann and carried unanimously.

The staff's recommendation was for denial.

BA05:092 ROBERT & VICKY WHITE

Mr. Tarmann

I make a motion to approve the request for variances to allow the deck to remain for the following reasons:

There are unique characteristics to the property. The residence is located very close to the road and the lake, and in close proximity to commercial uses as well as the public boat launch. The property does not have a garage and old pictures of the properties in this area show that the properties along this road usually had sidewalks, concrete patios, or block patios. If the deck is removed the Board feels that the property will not look as nice and that people will be more inclined to store belongings against the house. The decks also provide a second access to the house. Furthermore, the approval of this request would be consistent with a decision rendered in September of 2005, on a neighboring property, which was not appealed by the Wisconsin Department of Natural Resources. Therefore, due to the uniqueness of the property, the petitioners have demonstrated a hardship if they were to be forced to remove the deck. Therefore, the approval of this request is in conformance with the purpose and intent of the Ordinance.

The motion was seconded by Mr. Judson and carried unanimously.

The staff's recommendation was for denial.

BA05:093 KEN BYOM

Okauchee Lake Property LLC – Owner

Mr. Ward

I make a motion to approve the request for variances to allow the deck to remain for the following reasons:

There are unique characteristics to the property. The residence is located very close to the road and the lake, and in close proximity to commercial uses as well as the public boat launch. The property does not have a garage and old pictures of the properties in this area show that the properties along this road usually had sidewalks, concrete patios, or block patios. If the deck is removed the Board feels that the property will not look as nice and that people will be more inclined to store belongings against the house. The decks also provide a second access to the house. Furthermore, the approval of this request would be consistent with a decision rendered in September of 2005, on a neighboring property, which was not appealed by the Wisconsin Department of Natural Resources. Therefore, due to the uniqueness of the property, the petitioners have demonstrated a hardship if they were to be forced to remove the deck. Therefore, the approval of this request is in conformance with the purpose and intent of the Ordinance.

The motion was seconded by Mr. Schultz and carried unanimously.

The staff's recommendation was for denial.

BA05:098 MARK S. MARZION

Leonard Presser and Walter Leonardelli – Owners

Mr. Judson

I make a motion to approve the request for variances from the floor area ratio, floodplain/conservancy setback, and open space requirements as well as a special

exception from the minimum floor area requirements of the Ordinance for the second paragraph of the reasons as stated in the Staff Report and with the conditions as stated in the Staff Report with the following modifications:

Condition #3 shall read as follows: The footprint of the residence including attached garage shall not exceed 1,140 sq. ft. in size. The total square footage of the first and second floor excluding the attached garage shall be at least 1,300 sq. ft. The total floor area ratio on the property (including first and second floor of the residence and the attached garage) shall not exceed 18.3% as proposed.

Condition #6 shall read as follows: The first floor of the proposed residence must be at least 2 ft. above and the garage floor must be at least 1 ft. above the 100-year floodplain elevation of 792.4 MSL.

Condition #11 shall read as follows: No decks or patios are approved unless they are within the approved footprint and approved by the Planning and Zoning Division Staff.

The motion was seconded by Mr. Ward and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. The wetland on the property must be delineated and such delineation must be approved by the Wisconsin Department of Natural Resources. The wetland boundary must be surveyed by a registered land surveyor and the survey must be submitted to the Planning and Zoning Division staff for review and approval. This may be combined with the Plat of Survey required in condition No. 8 below.
2. The proposed residence with attached garage must be located at least 15 ft. from the side lot lines and the base setback line of the road and outside of the 100-year floodplain and the wetland/conservancy, as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located so that the outer edges of the overhangs conform with the offset and setback requirements.
3. The footprint of the residence including attached garage shall not exceed 1,140 sq. ft. in size. The total square footage of the first and second floor excluding the attached garage shall be at least 1,300 sq. ft. The total floor area ratio on the property (including first and second floor of the residence and the attached garage) shall not exceed 15%.
4. Prior to the issuance of a Zoning Permit, a complete set of house plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
5. Prior to the issuance of a Zoning Permit for the new residence, a Sanitary Permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.
6. The first floor of the proposed residence must be 2 ft. above and the garage floor must be 1 ft. above the 100-year floodplain elevation of 792.4 MSL.
7. Upon completion of the foundation of the residence and attached garage, certification shall be obtained from

a registered land surveyor that the floor elevations are in conformance with the above conditions. A copy of that certification must be submitted to the Town of Mukwonago Building Inspector and the Planning Division staff for review and approval.

8. Prior to the issuance of a Zoning Permit, a stake-out survey showing the location of the proposed residence, and attached garage, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
9. In order to ensure the construction of a new residence does not result in adverse drainage onto adjacent properties, a detailed grading and drainage plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. This grading plan may also need to be reviewed and approved by the Town of Mukwonago Engineer and the Waukesha County Land Resources Division. This grading plan may be combined with the plat of survey required in Condition No. 8.
10. Prior to the issuance of a Zoning Permit, a structural soil analysis must be submitted to and approved by the Town of Mukwonago Engineer verifying the structural integrity of the underlying soils on the subject property, and what may have to be done in order to accommodate the proposed residence.
11. No decks or patios are proposed nor approved herein.
12. Any and all approvals required from the Town of Mukwonago shall be obtained, and any conditions of such approvals must be complied with.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The petitioner will be able to use the property for a permitted purpose without the need for a variance from the floor area ratio requirements of the Ordinance. The maximum floor area ratio of 15% (1866.45 sq. ft.) will allow a reasonably sized residence with a two car attached garage to be constructed on this lot. Therefore, it has not been demonstrated, as required for a variance, that denial of the requested variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.

The approval of the request for variances from the floodplain/conservancy setback, and open space requirements as well as a special exception from the minimum floor area requirement of the Ordinance, with the recommended conditions, will allow the construction of a new residence outside of the floodplain on the property and will allow the owners to use the property for a permitted use. The majority of the lot is within the 100-year floodplain, which leaves a limited amount of space for a building envelope. No residence could be constructed on the property without the need for a variance from the floodplain/conservancy setback requirement. The petitioner is proposing to construct the new residence outside of the 100-year floodplain and

detailed grading and drainage plans will be required to ensure that the impact on the floodplain and on the lake is minimal. Due to the size of the lot being less than the required open space, no structure could be constructed on the lot without the need for a variance from the open space requirement of the Ordinance. Furthermore, excluding the attached garage, the proposed first floor of the residence of 728 sq. ft. will not meet the minimum first floor requirement of 850 sq. ft. Due to the limitations on the lot, it is reasonable to grant a special exception from the minimum floor area requirement to allow for a smaller footprint. Therefore, the approval of this request would be in conformance with the purpose and intent of the Ordinance.

OTHER ITEMS REQUIRING BOARD ACTION:

Mr. Tarmann *I make a motion to approve the attendance of the Board of Adjustment members at a Zoning Board of Adjustment/Appeals Workshop presented by the University of Wisconsin-Extension Center for Land Use Education to be held at the Kenosha County Center in Bristol, Wisconsin on March 3, 2006.*

The motion was seconded by Mr. Schultz and carried unanimously.

ADJOURNMENT:

Mr. Judson *I make a motion to adjourn this meeting at 9:18 p.m.*

The motion was seconded by Mr. Tarmann and carried unanimously.

Respectfully submitted,

Peggy Pelikan
Secretary, Board of Adjustment